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IN THE
Supreme Court of the United States

OCTOBER TERM, 1943.

No. 361

BARTOL SIKICH, EMMA SIKICH AND TRANSFER
REALTY CO., INC.,

Petitioners,

vs.

GLENN W. SPRINGMANN, AS TRUSTEE, IN THE MATTER
OF BARTOL SIKICH, VOLUNTARY BANKRUPT,

Respondent.

PETITIONERS' REPLY BRIEF.

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REPLY BRIEF.

Respondent has made four specific objections to the granting of the writ of certiorari herein, which are contained in pages 1 and 2 of respondent's objections and brief.

It is not the function of a petition for a writ of certiorari to present the legal points and authorities to support those that were presented to the court of last resort of the state. It is sufficient if the petition discloses that the court of last resort of the state has decided a federal question of substance not theretofore decided by this court, or that it has decided a question of substance probably not in accord with the applicable decisions of this court.

A. The question decided is one of substance, since it involves a money judgment in excess of seventeen thousand dollars, and an order to deliver to the trustee

numerous parcels of real estate, the total being probably in excess of fifty thousand dollars.

B. The question involved is a federal question as a trustee in bankruptcy has no power or authority except such as is given him by the statutes of the United States relating to bankruptcy. U. S. C. A. Title 11, Sec. 75, 107.

C. The only property of a bankrupt which a trustee in bankruptcy may recover is:

1. Property conveyed within four months of the adjudication with intent to defraud creditors. U. S. C. A. Title 11, Sec. 107(e).

2. Property conveyed within four months of adjudication in bankruptcy while the bankrupt is insolvent. U. S. C. A. Title 11, Sec. 107(e).

3. Property in the possession, actual or constructive, of the bankrupt. U. S. C. A. Title 11, Sec. 110(a).

4. Property transferred by the bankrupt in fraud of creditors. U. S. C. A. Title 11, Sec. 110(a-4).

The rights of the trustee being entirely a question arising under the statutes of the United States relating to bankruptcy, a federal question of substance is presented.

Respondent asserts that petitioners' statement required by Rule 12-1 is insufficient. Petitioners desire to make the following amendment for paragraph 2 on page 5 of their petition:

"Whether the state court had jurisdiction of the subject matter was raised by motion to dismiss at the close of plaintiff's case, (86-88, printed record 5-6) which motions were overruled, (87, 89, printed record 5, 7) was reviewed by separate motions at the close of all of the evidence, (102-104, printed record 8, par. 2

and 3) wherein it was asserted that the jurisdiction of the U. S. District Court was exclusive, which motion was by the trial court overruled, (104, printed record 9) was urged on appeal in the Supreme Court of Indiana, by an assignment of error that 'The court erred in assuming jurisdiction of this cause for the reason that the trial court did not have jurisdiction of the subject matter of the action,' (11, printed record 1, par. 1) and is again being urged here."

The Supreme Court of Indiana, in its opinion, as modified, (388-394, printed record 159-163) disposed of this question by holding that a separate legal entity (Transfer Realty Company, Inc.) was in possession of said real estate and had indicia of ownership. This is in direct conflict with the allegations of respondent's complaint, which alleges that said

"Sikich and Sikich never intended to and in fact did not part with the *ownership* and *title* and *management* of the property which they transferred to the said Transfer Realty Co., Inc., * * *. That said Transfer Realty Co., Inc., was in fact the individual, Bartol Sikich."

This question of jurisdiction is not merely an idle gesture which does not affect substantive rights. If the petitioner, Transfer Realty Company, was only a sham, then the state court had no jurisdiction. And this is the sole claim of the complaint. Nowhere is it alleged that the petitioner, Realty Company was a trustee, agent, holder under a secret trust, or any allegation which would recognize it as a legal entity. The sole claim is that it was not a legal entity. It is recognized by the state court that if the Transfer Realty Company had no existence, then the state court had no jurisdiction, the language being:

"That a bankruptcy court has summary jurisdiction over the *res* of property owned and in the possession of the bankrupt at the time of the adjudication is clear." (Printed record 160, bottom of page.)

The allegations of respondent's complaint, which must be taken as stating the truth, as it is an admission by pleading, are

"The defendants, Sikich and Sikich, never intended to, and in fact did not part with the ownership, title and management, * * * that they treated it as the property of Bartol Sikich (the bankrupt), * * * that the Transfer Realty Co., Inc., was in fact the individual Bartol Sikich." (285, printed record 114.)

If, as the Indiana Supreme Court found, ~~the~~ Transfer Realty Company was a separate legal entity in "actual possession (having) as well as indicia to the right of possession," (390, printed record 161) then it had rights which could not be denied to it by spurious findings of facts by the state courts. *Meadowmoor Dairies, Inc. v. Milk Wagon Drivers Union*, 312 U. S. 287. If a separate legal entity, then the petitioner, Transfer Realty Company, is entitled to the possession and ownership of the properties transferred to it, unless this transfer was made "in fraud of creditors." It can make no difference that the petitioner is a corporation. The same rule of law would apply if an individual, flesh and blood person, were involved. If the decision of the Supreme Court of Indiana is to stand, any conveyance made by a bankrupt to anyone prior to his adjudication in bankruptcy could be set aside at the suit of the trustee, whether made for consideration or stock in a corporation, money, bonds, love and affection, or any consideration either good or valuable; whether with or without fraudulent intent, and regardless to the length of time prior to the adjudication. Such cannot be the law.

However, on the petition for a writ of certiorari the only question is whether there is a federal question of substance, *probably* not in accord with the applicable decisions of this court. Petitioners insist that a federal question of substance is presented; that the authorities cited by peti-

tioners in their original brief herein show that the opinion of the Supreme Court of Indiana is probably not in accord with the applicable decisions of this court. The Transfer Realty Company should not be deprived of its property, which it has obtained in consideration for its capital stock; nor should the defendants, Sikich and Sikich, be held personally liable for the earnings of real estate owned by a separate legal entity. Whichever horn of the dilemma respondent desires to hang his hat on, he is still wrong, and this court ought to review this case and settle for all time for Indiana both the question of procedure and the substantive rights involved.

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